

**PLANNING COMMISSION MINUTES OF SEPTEMBER 12, 2005**

**2005-0703 – MV Development** [Applicant/Owner]: Application for a Use Permit on a 2.7-acre site to allow a church, a school, and office uses within an existing industrial building. The property is located at **965 East Arques Avenue** (near DeGuigne Dr) in an M-S (Industrial & Service) Zoning District. (Negative Declaration) (APN: 205-25-009) RK

**Ryan Kuchenig**, Assistant Planner, presented the staff report. The primary concern of the proposed use relates to the compatibility of the church use within the industrial zoned area. If this application is approved it may impact further industrial uses in the surrounding areas. The recent influx of proposals for places of assembly in industrial areas has resulted in a Study Issue to be completed early in 2006. The result of the study may enable further clarification to City policy or amendments to City ordinances and zoning districts related to places of assembly. Staff was unable to make the findings for the Use Permit and recommends denial of the permit. If the application is approved, staff is recommending a Condition of Approval (COA) restricting the use to three years. At that time, any negative impacts to the industrial area can be evaluated and the results of related studies be considered. The applicant could reapply at that time.

**Comm. Moylan** asked staff about the status of a moratorium regarding “places of assembly” in Industrial and Commercial Zoning Districts. **Trudi Ryan**, Planning Officer, said there is no moratorium currently in place. Staff is preparing information for the Council regarding an urgency ordinance that would prohibit additional applications from proceeding. The Council is scheduled to hear the Urgency Interim Zoning Ordinance at the September 20, 2005 Council meeting. Completed applications that have previously been submitted could still be considered. Comm. Moylan confirmed with staff that the applicant is removing the basketball hoops.

**Comm. Simons** asked about COA 1.F regarding the Use Permit being restricted to three years from the date of occupancy, or four years from the date of Planning approval. He confirmed with staff that the restriction would apply to the leasee, rather than the owner. Staff said the owner will lease the site to the applicant, and that the Use Permit runs with the land.

**Chair Hungerford opened the public hearing.**

**Guy Denues**, project architect, said the applicant could leave a basketball hoop if desired. He presented a diagram of the proposed site. He said the Alliance Christian Church offers services in Chinese and English and draws participants from a broad area. He expressed that this use would not impact the neighborhood as far as noise or infringement as it will be operating during

opposite hours of the neighboring uses. This site has abundant parking, plenty of trees, expanses of ground cover and will have handicap upgrades. He said staff has mentioned the loss of property tax. He said the participants will patronize the businesses in the area and will not intrude on the adjacent day-to-day uses. Mr. Denues presented a diagram of the existing uses, specifically identifying the businesses along a corridor, and stated that the Arques area seems to be in transition, moving toward public uses and away from industrial. He said that Sunnyvale has acres of vacant industrial land, that this is not a typical industrial zone, and the church use would be only one building in the back of a building. He commented that this site meets all the development standards and that the City has approved similar uses that do not meet all the standards. He said this church should not be held to a higher level than other similar uses in the area and reiterated that the church attendees would be supporting the Sunnyvale businesses. Mr. Denues said City policy supports the provisions of full quasi-public services like religious institutions. He said the church will not infringe on the existing neighborhood, and will not effect future development.

**Comm. Moylan** discussed with the applicant that the congregation is currently meeting in Willow Glen in a church building and would like to move to the new site as it meets their needs now and for the future. They further discussed the idea that this site is in transition and moving away from heavy industrial. Comm. Moylan said that the general concern is based on this use impacting industrial uses in the future. So the issue is that we have vacant industrial buildings, but if a school goes in then certain businesses cannot move in. Mr. Denues said that this is not a school use, but there was some discussion about whether "Sunday school" would be a school use. Mr. Denues said that if an industrial use moved in that the greater concern would be possible exposure to the thousands of people that go to the nearby Fry's or Lowe's on a daily basis rather than the few hundred people who would attend this church one day a week and in the evenings. Comm. Moylan agreed that this was a good point.

**Florence Fong**, a Sunnyvale resident, spoke in support of a permanent permit to allow this church use. She said the Church will serve the community providing emotional and spiritual support along with classes for English as a second language participants, citizenship classes, and parenting classes and will provide a safe place for children to have fun at no charge. She said the people that the church will attract will also shop in Sunnyvale which provides support through sales tax.

**David Fong**, a Sunnyvale resident, spoke in support of the project. He said the site is centrally located and will serve many Chinese participants living in this area. He said there are a lot of vacant industrial buildings along East Arques and that this site would provide an affordable new location with no parking or traffic problems. He said church attendees will support the City by shopping here and the City will benefit from the sales tax.

**Comm. Moylan** asked Mr. Fong if he considered it a problem that there is an adult business within walking distance of the church, as he is concerned that the adult business is incompatible with the proposed church use. Mr. Fong explained that the church has outgrown the current site and with the high real estate prices in this area that this site is a place that is large enough and that the church can afford.

**Comm. Simons** commented that Mr. Fong mentioned the cost of the industrial land being affordable. Comm. Simons said he has seen a number of religious sites converted to housing in the past few years and asked staff what the cost of industrial land is. He also asked staff what the size of the lot is on the corner of Mary and Iowa, where there used to be a church and how it compares to the size of this proposed lot. Ms. Ryan said she did not know the cost of industrial land and she would check on the lot size.

**Francesca Wong**, a Sunnyvale resident, spoke in support of the project. She said that she is excited that her home church may become a part of this community. She said the children and cultural programs are very impressive and help build character, provide a healthy dose of Asian culture and help attendees tackle issues from American and Asian cultures. Currently the church is far away from her Sunnyvale home. She added that the church attendees will become patrons of local businesses which will help the community financially.

**Comm. Moylan** commented that he does not doubt that everyone here believes that this church is a positive influence wherever it is and that having it in Sunnyvale would be a good thing. He said the question is why this industrial site might be the right place for the church. Ms. Wong reiterated the value of the church in her life.

**Ming Lin**, a Sunnyvale resident, spoke in support of the project. He said he is happy living in Sunnyvale, but the only thing he could not find in Sunnyvale was the right church for his family. He said the City needs to have these services. He said a City is not measured by tax dollars, but is measured by the community and he hopes the City of Sunnyvale will be a city of hope, faith and love.

**Kin Man Ng**, a Sunnyvale resident, spoke in support of the project. He said he currently attends a Chinese church elsewhere and was unable to find one in Sunnyvale. He said he would love to see a church allowed in this industrial area because he used to work in this area and believes it is a safe, quiet comfortable area.

**Angie Chang**, a Sunnyvale resident, spoke in support of the project. She said she would like to have this approved as a permanent church site for their church. She spoke about the values of this church that offers multi-language services and meaningful activities for all ages. She said she could not find any other Cantonese and English church in Sunnyvale.

**Helen Au** spoke in support of the project. She said she understands the Commissioners' concerns about the compatibility of a church use in an industrial zone which might impact future industrial businesses and the concern with assembling of young children in an industrial site. She said that these are legitimate concerns, but do not apply to her church as they are prepared for safety and security concerns.

**Arthur Wu**, a Sunnyvale resident, spoke in support of the project. He said he has seen Sunnyvale change over the years from a very quiet, progressing town to the very dynamic city that it is now. He hopes to stay in Sunnyvale and would like to raise his family here. He would like to have this church available for his family to attend and said there will be incompatibilities with uses anywhere the church goes.

**Dennis Cheong** spoke in support of the project. He addressed Comm. Moylan's question about why this church should be built in this place. He said this site is the best place to have the church because it will be the least impact to residents. He said Sunnyvale is the right place for the church because the City has a growing Asian population. He said the church can be a service to the community including the nearby adult business. They also invest in the youth of the community. He said there is no Cantonese church in this area.

**Comm. Moylan** asked Mr. Cheong where the closest Cantonese church is. He said in San Jose. There are Mandarin churches in Cupertino, but no Cantonese churches.

**David Fung**, pastor of West Valley Alliance Church which is part of the Christian Missionary Alliance, spoke in support of the project. The church would like to buy this building. He said one of the prime reasons they want to move to Sunnyvale is because there are many Cantonese in the area and Sunnyvale is centrally located and affordable. He said the people in this area are under a lot of stress and need a place to have spiritual counseling and where their families can be together. Many of the church attendees are Cantonese speaking, but the church also reaches out to other cultures. He said they also want to help their second generation attendees to assimilate into the American culture. He thanked the Commission for the opportunity of presenting the application to be considered.

**Comm. Simons** asked Mr. Fung if he knew the breakdown of where the parishioners live. He did not know for sure, but said that most of the parishioners live west of San Tomas Expressway. Comm. Simons also asked if he was familiar with the small Cantonese church that closed, that used to be in Sunnyvale. He was not aware of the church that closed.

**David Wong** spoke in support of the project. He said that a mixed-use street is valuable to the community. He said the church wants to teach children and

adults about the Bible and family values and hopes the Commission will approve the application for church use.

**Harriet Rowe**, a Sunnyvale resident, spoke against the project. She said she is pleading for the City citizens who asked the past Councils who obtained this land at a reduced rate to bring in businesses and their tax dollars. She said this is a non-profit group and there is no comparison to the tax dollars that a business would bring in. She discussed the basketball hoops that could be a liability and the future uses that may come in and have work hours the same as the church use. She encouraged the Commission to not to waive their right to say no. She said she can understand the applicant's need and compassion, but that we need to think in terms of the whole City.

**Chair Hungerford closed the public hearing.**

**Ms. Ryan** answered Comm. Simons question about the size of the property located at Mary and Iowa, stating that the lot was about 3.5 acres. She said this proposed site is about 2.7 acres.

**Comm. Moylan** asked if staff knew what the loss in tax revenue would be, if any, if this project were approved. Ms. Ryan said no. She said there is a difference in the property taxes depending on the type of business. She said there would also be a benefit of attendees patronizing the Sunnyvale shops which would also need to be considered. Comm. Moylan and staff discussed that this lot is Class C office space and discussed different possibilities that may occur with the site. Staff said it is hard to predict the market and there are a variety of possibilities that could occur with this site. Comm. Moylan asked about the LSI air quality subject. He said the report indicates that allowing this use could impact future this uses. Ms. Ryan said she did not think that "Sunday school" activities would be considered a school and that instead, the whole facility would be considered a church. But certain manufacturing chemicals are there all the time even though the production is not 24 hours, it could impact the reporting requirements and insurance requirements. Comm. Moylan referred to the nearby adult business and asked if this use was far enough away from the proposed site to not be an issue. Staff said the requirement is a minimum of 1000 feet and it looks like this site is about that far away. Comm. Moylan asked how staff distinguishes this application from the ones we recently approved so if we follow the staff recommendation that we are not being arbitrary. Ms. Ryan said the most recent places of assembly approved are located on the other side of Wolfe Road on Arques. Two of the facilities approved were conditioned with a three-year time limit. All three are in proximity to current residential uses or soon to be residential uses. Comm. Moylan said the timing of this is application is unusual since there is the moratorium study coming. Ms. Ryan noted that it is highly likely that the study will result in new policy, but the Commission will need to make the best decision on this application with what the policy is now.

**Comm. Babcock moved for Alternative 1 to adopt the Negative Declaration and deny the Use Permit. Comm. Klein seconded.**

**Comm. Babcock** said she was unable to make the findings. She does not feel the use is compatible with the surrounding uses and it limits the future sites. This site is completely surrounded by industrial and the day will come when we have the next industrial boom and we will have limited industrial space. She said she regrettably moved to deny this and encouraged the applicant to find an alternative site in Sunnyvale, but not in the middle of the industrial section.

**Comm. Klein** said he was also torn about the project and that there are a lot of positive things this group would bring to Sunnyvale. The biggest issue is that this site is in the heart of an industrial area and is surrounded by industrial use. He said, going forward, we do not know what the uses will be and this use could ultimately affect the industrial use. He said he hopes the applicant can find another site in Sunnyvale and does not feel this is the right site for this use.

**Comm. Simons** concurred with his fellow Commissioners. He said he is sympathetic to the group applying, but the issue is whether the use is appropriate or not at this site. He said this place of assembly is not contiguous with anything else we have allowed in the City. Comm. Simons said the City has changing demographics with some ethnic group's numbers decreasing and thus selling their sites which were changed to residential use. There are other ethnic groups growing in numbers and wanting to find a site that they could purchase. He said he would like to have staff discuss how we could do these transfers of places of gathering from one group to another for organizations like this one.

**Comm. Moylan** commented that he hopes the Council will provide guidance on the issue of places of assembly in industrial zones. He said these decisions are very difficult and the stakes are high either way and some additional direction would help him feel more comfortable with making these decisions. He said he hopes there will be a moratorium on this issue until it is all sorted out and he is appreciative that Council is having a study issue to have a more well-defined policy in place.

**Chair Hungerford** agreed that this is a difficult decision. The applicant has presented a very good case about the uses along Arques, but there are big blocks of industrial buildings there. If this church went in the middle of these buildings, it pushes the area towards non-industrial. At the same time this may not be a very attractive area for industrial and we may be losing a great opportunity. He said he reluctantly supports the motion. He said he looks forward to additional criteria from Council to help exercise judgment on these difficult decisions.

**Final Action:**

**Comm. Babcock made a motion on Item 2005-0703 to adopt the Negative Declaration and deny the Use Permit. Comm. Klein seconded.**

**Motion carried 6-0, Comm. Fussell absent.**

**This item is appealable to the City Council no later than September 27, 2005.**